

Below is an Opinion of the Court.


PETER C. McKITTRICK
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In Re:

DOUNEA-NINA JACKSON,

Debtor.

DOUNEA-NINA JACKSON,

Plaintiff,

v.

CITIBANK, N.A., AS SUCCESSOR
TRUSTEE TO U.S. BANK, NATIONAL
ASSOCIATION AS TRUSTEE FOR MASTR
ADJUSTABLE RATE MORGAGTE PASS-
THROUGH CRETIFICATES, SERIES 2007-
HF1 and AMERICA'S SERVICING
COMPANY, its successors in
interest, agents, assignees and/or
assignors,

Defendants.

Bankruptcy Case
No.16-32306-pcm13

Adv. Proc. No. 17-3014-pcm

MEMORANDUM OPINION

BACKGROUND

Plaintiff filed this adversary proceeding against her mortgage lender, stating two claims for relief: 1) a claim for declaratory judgment determining several questions related to the loan on her real

1 property; and 2) a claim for breach of contract based on defendant's
2 allegedly improper nonjudicial foreclosure of its lien on the Property.

3 Wells Fargo, of which defendant America's Servicing Company is a
4 division, ("defendant") filed a motion for judgment on the pleadings
5 (the "Motion"), seeking judgment in its favor on both of plaintiff's
6 claims for relief. In a hearing on June 21, 2017, this court ruled that
7 defendant's motion would be granted as to plaintiff's claim for
8 declaratory judgment on the basis that it is precluded by a state court
9 judgment of foreclosure. This court denied defendant's motion as to
10 plaintiff's breach of contract claims.

11 Defendant filed this motion for reconsideration, asking that the
12 court

13 amend its ruling to hold that plaintiff's breach of contract
14 claim is barred by the Rooker-Feldman doctrine, issue
15 preclusion and claim preclusion. Alternatively, [defendant]
16 requests the Court to clarify the basis for its determination
17 not to dismiss plaintiff's breach of contract claim.

18 Motion, p. 5.

19 DISCUSSION

20 A party seeking to amend a judgment pursuant to Fed. R. Civ. P. 59,
21 made applicable to this adversary proceeding by Fed. R. Bankr. P. 9023,
22 must raise one of the following grounds: (1) an intervening change in
23 the controlling law; (2) the availability of new evidence (not
24 previously available); or (3) the need to correct a clear error of law
25 or prevent manifest injustice. All Hawaii Tours Corp. v. Polynesian
26 Cultural Center, 116 F.R.D. 645, 649 (D. Haw. 1987), rev'd on other
grounds, 855 F.2d 860 (9th Cir. 1988).

1 In support of its motion, defendant relies primarily on Huerta v.
2 Wells Fargo Bank, N.A., 2017 WL 815239 (D. Or. Mar. 1, 2017). Because
3 that case does not represent an intervening change in the law and no new
4 evidence or manifest injustice was alleged, the court will assume that
5 defendant is arguing that the court's ruling was a clear error of law.
6 Defendant appears to argue that the court made an error in determining
7 that plaintiff's contract claims were not previously litigated. For the
8 foregoing reasons, defendant is incorrect and its motion will be denied.

9 Defendant points to Huerta for the proposition that a "breach of
10 contract claim brought after a judicial foreclosure claim is barred by
11 claim and issue preclusion." Motion, p. 3. This reading is overbroad.

12 In Huerta, the debtors originally financed the purchase of two
13 adjacent parcels, granting the lender a first position trust deed on
14 both. 2017 WL 815239 at *1. Later, the debtors refinanced and the
15 lender agreed that only one of the parcels secured the loan. Id. The
16 loan was eventually sold to Wells Fargo. Id. Ultimately, the debtors
17 defaulted on the refinanced loan and Wells Fargo initiated judicial
18 foreclosure proceedings. Id. As part of those proceedings, Wells Fargo
19 sought declaratory relief to reform the trust deed to include both
20 parcels. Id. Wells Fargo was granted default judgment. Id.

21 Sometime later, following the sale of both parcels in a sheriff's
22 sale, the debtors moved to set aside the default judgment because of
23 lack of adequate notice, inadvertence, surprise, neglect, fraud,
24 misrepresentation, and other misconduct by the Wells Fargo. Id. at *2.
25 "Specifically, the [debtors] alleged that Wells Fargo obtained the
26 equivalent of an illegal deficiency judgment by reforming the trust deed

1 to include the [second parcel]." Id. The debtors' motion was denied.
2 Id. Thereafter, the debtors filed a complaint in federal court alleging
3 that 1) the lender breached the covenant of good faith and fair dealing
4 and 2) the lender was unjustly enriched. Id.

5 The district court held that the debtors' claim for breach of the
6 covenant of good faith and fair dealing was barred by claim preclusion.
7 Id. at *3. The court reasoned that, because the claim was based on the
8 deed of trust and on the same factual transaction at issue in the
9 foreclosure proceedings, it could have readily been disposed of in the
10 state court proceedings and was, therefore, precluded in the subsequent
11 federal proceedings. Id. By contrast, the unjust enrichment claim did
12 not "contest the foreclosure or seek to have the judgment of the
13 foreclosure set aside" and was not precluded. Id.

14 Plaintiff's contract claims at issue in this case are more similar
15 to the unjust enrichment claims than the contract claims raised in
16 Huerta. As stated in this court's ruling,

17 [The allegations of plaintiff's contract claims] address
18 conduct by the defendant, not the content of the judgment.
19 Moreover, whether or not such conduct constitutes a breach for
20 which plaintiff is entitled to [relief], neither challenges
21 the judgment nor is it inextricably [intertwined] with the
22 judgment.

23 Ex. 1 to Motion for Reconsideration, Pg. 6.

24 Like the unjust enrichment claims in Huerta, plaintiff's
25 contract claims do not "contest the foreclosure or seek to have the
26 judgment of the foreclosure set aside." At issue in the state
court judicial foreclosure proceedings was whether plaintiff

1 breached her obligations as set out in the loan documents such that
2 defendant was entitled to a judgment of foreclosure. The state
3 court did not and was not required to reach the issue of whether
4 defendant had breached any of its obligations set out in the loan
5 documents with regard to the failed nonjudicial foreclosure
6 proceedings in order to enter judgment in the foreclosure action.

7 Moreover, unlike the contract claims in Huerta, plaintiff's
8 contract claims in this case do not stem from the same factual
9 transaction as the judicial foreclosure proceeding. Instead, they
10 address alleged actions by defendant that took place in the
11 nonjudicial foreclosure process, which was independent of and
12 factually distinct from the judicial foreclosure action.

13 CONCLUSION

14 For the above-stated reasons, defendant failed to meet its burden
15 under Fed. R. Civ. P. 59 "to show a clear error of law." Plaintiff
16 should submit an order denying defendant's motion.